

BOARD OF APPEALS CASE NO. 5363

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BEFORE THE

APPLICANT: Philip & Lisa Jennings

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct an addition *
within the side yard setback;
824 Earlton Road, Havre de Grace**

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OF HARFORD COUNTY

Hearing Advertised

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Aegis: 6/18/03 & 6/25/03

HEARING DATE: July 23, 2003

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Record: 6/20/03 & 6/27/03

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Philip Jennings and Lisa Jennings, are requesting a variance, pursuant to Section 267-34C, Table II, of the Harford County Code, to allow an addition within the required twenty (20) foot side yard setback in an Agricultural District, or, in the alternative, a variance, pursuant to Section 267-20B, to allow an addition to a non-conforming structure closer to the lot line than is currently existing.

The subject parcel is located at 824 Earlton Road, Havre de Grace, Maryland 21078, in the Second Election District, and is more particularly identified on Tax Map 44, Grid 3C, Parcel 658, Lot 22. The parcel contains approximately 20,000 square feet more or less.

The Applicant, Philip Jennings, appeared and testified that he and the Co-Applicant, Lisa Jennings, are the owners of the subject property. He stated that he had read the Department of Planning and Zoning's Staff Report, and had one correction to that document. According to the witness, the Staff Report indicates that the proposed addition would be 18 feet by 22 feet, while the actual proposed size is 18 feet by 34 feet. With the exception of this item, the Applicant had no changes or corrections to the information contained in the Staff Report.

Mr. Jennings next described the rolling topography of his lot, indicating that it slopes downward from front to rear, and from side to side. The property is currently improved by a bi-level, single-family dwelling, attached porch, gravel driveway, and a frame shed/utility building. The Applicant stated that he proposes to construct a two-story addition to the right side of the existing dwelling, creating an attached garage with a third bedroom on the upper level.

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The proposed addition would be located on the side of the property which contains the existing drive to save the cost of relocating the driveway. Construction of the addition on the other side of the dwelling would require a similar variance, and building it behind the existing dwelling would require extensive grading, because of the steep slope of the rear yard. In addition, the witness testified that the proposed location is the only place on the property where an addition could be constructed without causing a loss of living space from the existing dwelling.

Mr. Jennings introduced numerous Exhibits in support of his application. For the sake of clarity, the Hearing Examiner utilized the same numbers with which Applicant had pre-marked his exhibits. Applicant introduced drawings of the existing dwelling and the proposed addition (Applicant's 1A & 2A), a site plan of his property, showing the location of the proposed addition, and an aerial photograph of his property, with the proposed addition drawn in on the left side of his home (Applicants' 5A and 6A).

Applicants' Exhibits 3A and 3B are copies of topographical maps, on which Mr. Jennings marked the direction of stormwater runoff which occurs during heavy rains. According to the witness, the rainwater runs downhill, toward the rear of his property, from left to right. If the proposed addition were constructed behind the existing dwelling, its foundation would flood during heavy rains. In addition, locating the addition in that area would require the building of expensive retaining walls, while the proposed site is flat and would require little excavation.

Applicant then introduced the original "Restrictions for Chapel and Earlton Road Lots" which were given to him when he first purchased the property. These restrictions indicate that no structure shall be located on said lots nearer than 35 feet from the front lot property line, nor nearer than 10 feet from any side property line. (Applicants' 4A) Finally, Mr. Jennings introduced the original subdivision Plot for the Crestview, recorded in 1960, which shows a 50 foot future right of way located to the left of his property line (Applicants' 7A). There is no indication on that plot as to whether the future right of way was to be a public or private road, however it is undisputed that the right of way has never actually been developed or used.

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According to Mr. Jennings, the proposed addition will be similar in size and appearance to other additions and garages found within the neighborhood, most of which have garages. In support of this testimony, the Applicant introduced a computer printout showing the size and square footage of other homes within the Crestview subdivision, indicating that substantially all of the homes located within his neighborhood have garages, and more square footage than his dwelling (Applicants' 8A). He also testified that the proposed addition will be compatible with both the existing dwelling and other property in the neighborhood.

The witness further testified that the existing dwelling is 32 feet from the property line, and that the proposed addition will be 13 feet 8 inches from the property line at its closest point. He indicated that the proposed addition will have no adverse impact on any adjacent properties because the outside wall of the garage will be 150 feet from the nearest residence.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune indicated that in the Department's view, the existing dwelling is not a nonconforming structure because no construction was ever commenced on the future right of way shown next to Applicants' dwelling on the Crestview subdivision plot which was recorded in 1960. The witness also pointed out that the existing dwelling was constructed on the lot with a 31 foot side yard setback, pursuant to proper permits obtained prior to construction. The Department, therefore, determined that the appropriate request in the subject case is for a variance from the side yard setback requirements.

Mr. McClune testified that the Department found that the subject property is unique because of its steep topography, and that the proposed location is the only practical location on the property on which to construct an addition. He indicated that the proposed addition will not have any adverse impact on neighboring properties because of its distance from the closest dwelling. Mr. McClune further testified that the Department of Planning and Zoning recommended approval of the subject request in its June 27, 2003 Staff Report, subject to the conditions set forth in that Report.

No witnesses appeared in opposition to the requested variance.

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CONCLUSION

The Applicants, Philip Jennings and Lisa Jennings, are requesting a variance, pursuant to Section 267-34C, Table II, of the Harford County Code, to allow an addition within the required twenty (20) foot side yard setback in an Agricultural District, or, in the alternative, a variance, pursuant to Section 267-20B, to allow an addition to a non-conforming structure closer to the lot line than is currently existing.

Section 267-20B of the Harford County Code, which pertains to nonconforming structures provides:

“Any residential use may be continued and may be enlarged without increasing the number of dwelling units therein, provided that no such addition shall extend closer to any lot line than existing building surfaces or the required yard dimensions for the district, whichever is less. [Amended by Bill No. 84-55]”

Part 1, Article I, Section 267-4 of the Harford County Code defines nonconforming buildings or structures as “[a] building or structure the size, dimension or location of which was lawful prior to the adoption or amendment of this Part 1 but which fails, by reason of adoption or amendment of this Part 1, to conform to the present requirements of the district.”

The original “Restrictions for Chapel and Earlton Road Lots” given to Applicant when he purchased the property indicate that no structure shall be located on said lot nearer than 35 feet to the front lot line, nor nearer than 10 feet to any side line. If the 50 by 200 foot parcel, reserved as a future right of way had actually been developed, the Applicants' property would have become a corner lot subject to two front yard setbacks. In that event, because their home was constructed 31 feet from the right of way, as opposed to the required 35 feet, their dwelling would have become a nonconforming structure. However, because the right of way has never been developed, the Applicants property is not a corner lot at this time, and their dwelling is therefore, not a nonconforming structure. In the event that the right of way is developed at a later date, the Applicants' home may become a nonconforming structure at that time.

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Because the Applicants' property is not a corner lot, it is subject to only one front yard setback. The portion of the property on which they intend to construct the requested addition is therefore located within the side yard. Section 267-34C, Table II of the Harford County Code requires a minimum 20-foot side yard width for single family homes located within the Agricultural District.

Harford County Code Section 267-11 permits the granting of variances, stating:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique only if there is a finding that a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is unique, the trier of fact may proceed to the second prong of the test. The second prong involves a determination of whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

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The Hearing Examiner finds that the subject property is unique. The steep topography of the lot, and the flow of stormwater runoff toward the rear of the property makes the proposed location the only practical place on the property in which to construct an addition. The Hearing Examiner also finds that literal enforcement of the Code would result in practical difficulty for the Applicants. As demonstrated by Applicants' Exhibit 8A, most of the other homes within the Crestview neighborhood have both garages, and more square footage than the Applicants' dwelling. If the requested variance is not granted, the Applicants will be unable to construct an addition to provide a garage, and an upper-level third bedroom, and will therefore be denied property rights commonly enjoyed by other homeowners within their community.

Finally, the Hearing Examiner finds that the granting of the requested variance will neither be substantially detrimental to adjacent properties, nor materially impair the purpose or intent of the Code or the public interest. The proposed construction is architecturally compatible with both the existing dwelling and with other properties in their neighborhood. The proposed construction will be located next to a 50 foot by 200 foot vacant parcel, and will be over 150 feet from the closest residence.

The Hearing Examiner recommends approval of the Applicant's request, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setback than the distance requested herein.

Date **AUGUST 27, 2003**

Rebecca A. Bryant
Zoning Hearing Examiner